IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

OP.No. 624 of 1998(Y)

PETITIONER:

REHABILITATION PLANTATIONS LTD., PUNALUR, REPRESENTED BY ITS MANAGING DIRECTOR, SRI. K.J. VARGHESE.

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
SRI.S.ANANDA KRISHNAN

RESPONDENTS:

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1. THE INSPECTING ASSISTANT COMMISSIONER (SPECIAL CIRCLE) AGRL. INCOME TAX AND SALES TAX, COCHIN 15

2. THE COMMISSIONER OF AGRL. INCOME TAX, BOARD OF REVENUE, (TAXES), THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/12/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 1024 OF 1998 IN OP 624 OF 1998

DISMISSED

17.12.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF NOTICE DATED 5.3.1997 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P2 TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF THE STATEMENT SHOWING THE SALES OF THE CONCENTRATED LATEX HELD IN STOCK BY THE PETITIONER AS ON 31.3.1992

EXT.P4 TRUE COPY OF THE LETTER DATED 20.8.1997 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P5 SERIES TRUE COPY OF THE INVOICES PRODUCED BEFORE THE 2ND RESPONDENT.

EXT.P6 TRUE COPY OF THE ORDER DATED 18.10.1997 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 624 OF 1998

Dated this the 17th day of December, 2007

JUDGMENT

Heard senior counsel, Sri. Pathros Matthai appearing for the petitioner and Government Pleader for the respondents. The order under challenge is Ext.P6 issued by the Commissioner of Agricultural Income-tax declining to waive interest charged for short payment of advance tax. Counsel for the petitioner contended that short-fall in payment of 80% of the tax before the end of the previous year relevant for the assessment year 1992-93 arose on account of unprecedented increase in rubber price from March to July of the following year. It is seen that the very same claim was put forward by the petitioner and in fact the Commissioner asked the petitioner to produce documents such as sale bill to prove the same. It is also stated in Ext.P6 order that documents were produced by the petitioner. However, the Commissioner did not accept the evidence as sufficient to waive the interest. Counsel contended that Commissioner has not in fact considered the documents produced and the documents produced prove petitioner's case of increase in price resulting in price over the

estimated price for rubber. Even though it may be a case for remand for reconsideration, I do not find any justification for remanding the case back to the Commissioner for decision, for more than one reasons. The company is a Government company with major investment by the State Government. Even if interest is cancelled and refund granted the same will go to the Government towards dividend. The other aggrieved party is Central Government which has also equity participation in the company. Moreover the amount sought to be waived is interest payable at the rate of 15% per annum for the short payment of advance tax. There is no case for complete waiver of interest, because Government has to be compensated for belated payment of advance tax. If the matter is remanded, the Commissioner as well as the company will have to do the same exercise of perusing 15 year old records and the ultimate result will be a little reduction in interest. Since benefit ultimately goes to Govt. and claim of refund is also against Govt., I do not find any justification to remand the matter to the Commissioner at this distance of time. O.P. is therefore dismissed.

(C.N. RAMACHANDRAN NAIR)
Judge